

OGC REVIEW
COMPLETED

15 April 1955

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MEMORANDUM FOR:

SUBJECT: Senate Hearings re Public Law 513 - 81st Congress

1. I have examined the record of the Senate Committee hearings on PL 513 with particular reference to the meaning of the terms, "classified information", and "cryptographic system", "secret writing", "mechanical or electrical device or method". The hearings reveal very little on the first listed term and nothing on the others.

2. Hearings were conducted by a Sub-committee of the Senate Armed Forces Committee on S. 2680 - 80th Congress and its successor bill, S. 277, 81st Congress (which was enacted into PL 513). There was only a single witness for each hearing, namely a Navy representative, who stated in each hearing that he was presenting the combined position of the entire military establishment and the Central Intelligence Agency, and, in the case of S. 277, the Department of State. The witnesses were Rear Admiral Earl E. Stone, Chief of Naval Operations (accompanied by Captain E. S. L. Goodwin), in the hearing on S. 2680, and W. John Kenney, Under-Secretary of the Navy, in the hearing on S. 277.

3. Both witnesses explained that the purpose of the bill was to protect our own codes and cryptographic systems from exposure to unauthorized persons and to prevent the revelation of information as to our activities in the field of communication intelligence. The two acts now on the books, namely the Diplomatic Codes Act of 10 June 1933, (48 Stat. 122) and the Espionage Act of 1917 are considered inadequate. The former is concerned only with diplomatic codes and prohibits only the furnishing to another of any official diplomatic code or matter which has been prepared in such a code; the latter requires that intent to injure the United States be proved.

4. Testimony concerning "classified information" was as follows:

- (a) Admiral Stone (Vol. 2, Unprinted Hearings, 80th Congress, Committee on Armed Forces, U. S. Senate, p.9):

"It should be pointed out that the bill attempts to protect only classified information in the stated categories and that the term 'classified information' is, for this purpose, specifically limited to information restricted and withheld for reasons of national security. The sponsoring departments believe that this feature originally included at the

request of the U. S. Archivist for reasons having to do solely with his functions, is an ample safeguard of freedom of speech and of the press since, in any prosecution under the bill, the government would have to prove not only that the information involved was 'classified', but that the classification had been imposed for reasons of national security."

"Obviously the Government would never undertake a prosecution unless it could so prove and unless it could demonstrate that its reasons for the classification in the specific instance were pretty well founded."

- (b) Under-Secretary Kenney (Vol. I, Executive and Unprinted Hearings, 81st Congress, 1st Session, Committee on Armed Forces, U. S. Senate, p. 19):

"The National Military Establishment believes that the amendments suggested earlier constitute an ample safeguard of freedom of speech and of the press called for in an editorial in the Washington Post discussing the bill, since in any prosecution under the bill the Government would have to prove not only that the information involved was 'classified' but that the classification had been imposed for reasons of national security."

5. Mr. Pforzheimer advises that he knows of no written action we took with respect to the enactment of PL 513.

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Office of the General Counsel

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